

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SYLVESTER JAMES MAHONE,

Plaintiff,

v.

DOUG WADDINGTON, *et al.*,

Defendants.

Case No. C04-5463RJB-JKA

ORDER AFFIRMING
MAGISTRATE [JUDGE]
ARNOLD'S ORDER DENYING
COUNSEL

This matter comes before the court on Plaintiff's Objection to Magistrate [Judge] Arnold's Order Denying Counsel (Dkt. 120). The court has considered the pleadings filed in support of and the motion and the file herein.

I. PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff Sylvester Mahone is a prisoner at the Stafford Creed Corrections Center and brings suit under 42 U.S.C. § 1983. Dkt. 1. Mr. Mahone has filed three separate motions to appoint counsel. Dkt. 71, 97, 117. The first motion was denied as premature, the second motion was stricken because the case had been stayed, and the third motion was denied on the merits because the plaintiff failed to demonstrate exceptional circumstances warranting the appointment of counsel. Dkt. 91 at 2, 102, 119 at 2. The plaintiff now files objections under Federal Rule 72(a) to the denial of his third motion, contending that while he may be able to articulate his claims, he

1 is unable to bring this case to a full trial himself because of the complexities of trial. Dkt. 120 at 2.

3 II. DISCUSSION

4 Federal Rule 72(a) allows parties to object to orders issued by magistrate judges on
5 nondispositive matters within 10 days of being served with a copy of the order. Fed. R. Civ. Pro.
6 72(a). Such objections are considered by the district judge, who may modify or set aside any
7 portion of the order that is found to be clearly erroneous or contrary to the law. *Id.*

8 In order to demonstrate that exceptional circumstances warrant the appointment of
9 counsel, Mr. Mahone must demonstrate a likelihood that he will succeed on the merits of his
10 claims and that he is unable to articulate his claims *pro se* due to the complexity of the legal
11 issues. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). Mr. Mahone's motion
12 contends that his claim has a high probability of success but only if counsel is appointed. Dkt. 117
13 at 5. The motion does not offer any facts about the merits of the case to support this assertion.
14 The only *legal issues* that Mr. Mahone contends are too complex for him to articulate *pro se* are
15 the extent and proximate cause of his injuries. *Id.* Mr. Mahone also contends that the need for
16 discovery contributes to the case's complexity, but that is not the standard for determining a
17 case's legal complexity. *See Wilborn*, 789 F.2d at 1331 ("If all that was required to establish
18 successfully the complexity of the relevant issues was a demonstration of the need for
19 development of further facts, practically all cases would involve complex legal issues."). Mr.
20 Mahone has failed to demonstrate that Magistrate Judge Arnold's determination that the
21 plaintiff's bald assertion that his case has a likelihood of success and that his case is complex
22 because it involves medical questions and the issue of proximate cause is neither clearly erroneous
23 nor contrary to the law. The court should overrule Mr. Mahone's objections and affirm
24 Magistrate Judge Arnold.

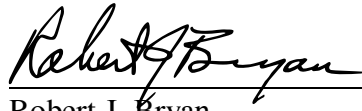
III. ORDER

Therefore, it is hereby

ORDERED that Plaintiff's Objection to Magistrate Arnold's Order Denying Counsel (Dkt. 120) is **OVERRULED** and Magistrate Judge Arnold's Order Denying Counsel (Dkt. 119) is **AFFIRMED**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

DATED this 10th day of November, 2005.


Robert J. Bryan
United States District Judge